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A Guide for
People Serving a
Life Sentence
15-25



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Judicial Review

A Guide
for People
Serving a
Life Sentence
15-25

2002



**Don't sit and let the
sands of time run by—
start working now on
your review.**

*Tom French,
the first LifeLine In-Reach Worker*

*** Please note that this booklet is not a law book. It is a collection of information that you can use to prepare for your judicial review, an important step in your life. If you have any questions about the information in this handbook, talk to your lawyer or your In-Reach Worker.*

Dedication and thanks.

These pages have been put together by a writer who has benefited greatly from the words and deeds of Tom French, the first LifeLine In-Reach Worker, using helpful information provided by the Correctional Service of Canada, and inspired by the many lifers who are responsible, contributing members of Canadian society.

The National LifeLine Resource Worker wishes to take this opportunity to thank everyone involved for providing encouragement and support.

Message of hope

Yesterday cannot be changed
Don't walk in the dark
Work for a brighter tomorrow NOW

*René Durocher
National LifeLine Resource Worker*

Table of contents

Introduction

What is judicial review?	1
What are the rules of judicial review?	2
What does this mean for you?	3
What's in this handbook?	4

The Judicial Review Process

Who is eligible? When are you eligible?	5
How should you decide whether to apply?	6
What happens during the process?	7
How do you get to the judicial review hearing?	8
What are CSC's responsibilities?	8
What happens during the judicial review hearing?	10
What information <i>must</i> the jury consider?	11
What other information <i>may</i> the jury consider?	12
What are the possible results of a judicial review hearing?	12

How to Prepare for Your Judicial Review and Your Life

Who can help you prepare for your judicial review?	14
Who else can help?	15
What should you keep in mind when choosing a lawyer?	16
What will you need at the judicial review hearing?	18
What else should you do to prepare for your judicial review hearing?	19

Conclusion 22

Information on LifeLine	24
Acknowledgements	25
Appendix A: Outcomes of all Judicial Reviews	26
Appendix B: People Working with You Throughout Your Sentence	28

MISSION

The mission of LifeLine is to provide, through the In-Reach component and community endeavours, an opportunity to motivate inmates and to marshal resources to achieve successful, supervised, gradual reintegration into the community.

LifeLine is a partnership of the Correctional Service of Canada (CSC), the National Parole Board (NPB) and voluntary, community-based agencies sponsoring paroled lifers.

Introduction

What is judicial review?

The judicial review process was established in 1976 and became effective in the early 1990s. It gives lifers with a parole ineligibility of 15 years or more the opportunity to have their parole eligibility date re-examined in light of new information. There are two parts to a judicial review.

The first part is the pre-screening. Here, anybody can apply if they meet the criteria outlined in the subsection "Who is eligible?" on page 5. Apply in writing to the Chief Justice in the province where you were convicted. If there is no reasonable prospect that your parole ineligibility date will be moved back, the pre-screening process will save you from going through with the hearing.

If the judge approves your application, there will be a judicial review hearing. A jury will decide whether you can have your parole ineligibility reduced from what was ordered when you were convicted. Mainly, this hearing calls attention to changes in your situation that might justify a less harsh sentence.

The jury can recommend, or not recommend, that the judge reduce the time before you're eligible for parole. If your judicial review is successful, however, that doesn't mean you'll be released right away. You still have to apply for parole and go through that process.

Always keep in mind that "life is life." A life sentence never expires. The National Parole Board might give you a conditional release, but you are still under sentence. You can be returned to prison if you break the conditions of your parole or commit a new offence.

What are the rules of judicial review?

Section 745.6 of the *Criminal Code of Canada* governs the judicial review process. It outlines these rules:

- whether you are eligible to apply;
- where you apply;
- what you submit;
- when your application will be accepted; and
- when and whether you can apply again if your application is not accepted.

Be aware of some important elements of judicial review:

- The victim's family members can write to the court to provide information and they can be witnesses during the judicial review proceedings.
- If you're turned down by the Superior Court judge or by a jury at a hearing, you may be able to re-apply after at least two years. The Superior Court judge or the jury may decide, however, that you cannot reapply.
- If the jury decides to reduce the ineligibility period, it must do so unanimously. But, only two-thirds (2/3) of them need to agree on the number of years by which the sentence may be reduced.

The last two points, about re-application and jury majorities, apply to applications made after January 1997, even if the convictions or sentences were imposed long before.

What does this mean for you?

Be prepared to work 15 years for your judicial review application. The court will look at your behaviour and conduct from the first day of your sentence. On the other hand, although judicial review is called the "faint hope clause,"

80 percent of the applications that have been reviewed have led to reduced eligibility dates.

What's in this handbook?

This handbook will describe:

- *who is eligible and how to decide if you should apply*
- *the judicial review process*
- *what CSC is required to do for you if you are accepted for judicial review*
- *what happens during the hearing*
- *how you can prepare for a judicial review hearing*
- *resources to help you, and*
- *tips on choosing a lawyer.*

The Judicial Review Process

Who is eligible?

When are you eligible?

If you are serving life and you have made positive and significant changes in your life, you may apply for judicial review if

- you have been convicted of a murder or high treason;
- you have been sentenced to life imprisonment without eligibility for parole for a period greater than 15 years; and
- you have served at least 15 years, excluding time out on bail or time free pending appeal.

However, you cannot apply for judicial review if you were convicted of more than one murder, even if you meet all the other criteria.

Once you have applied for judicial review, it usually takes one to two years to prepare the paperwork for the judicial review process.

How should you decide whether to apply?

As of January 13, 2002, 571 Canadian lifers were eligible to apply for a judicial review, but only 118 had applied. Of these, 94 had their parole ineligibility reduced. That's 80 percent. The other 24 applications were denied, either at the pre-screening stage or by the jury (see Appendix A).

Each case is very different, so you need to look at a number of factors in your situation to see whether it's beneficial for you to apply, if you meet the eligibility conditions listed in the section before this one.

- Remember that your eligibility date for unescorted temporary absences (UTA), work release and day parole is three years before your full parole eligibility.
- If you were convicted of second-degree murder and sentenced to more than 10 years, after sentencing you may apply directly to the Court of Appeal to have your sentence reduced. In this case, you may never need to go through judicial review.
- Even if the court reduces your parole ineligibility at a judicial review hearing, this doesn't mean full parole. You must keep working with your institutional parole officer to apply for conditional release through the normal process.

- Make the decision after talking to your lawyer and your supporters.
- Remember, you are the one who has the final decision.

What happens during the process?

As mentioned in the introduction, the first thing you do is apply to the Chief Justice of the Superior Court of the province or territory where you were convicted. You ask that the number of years before you're eligible for parole be reduced.

The Chief Justice looks at your application for new information about your situation. The judge also considers any report from the Correctional Service of Canada and any other information provided by you or by the Attorney General.

If you are applying for a judicial review hearing in a province other than the one where you are incarcerated, you will be moved to a correctional facility in that province for the duration of the hearing. This is described in Commissioner's Directive 540 and in Standard Operating Procedure 700-15 on the "Transfer of Inmates." You can find these documents in your institutional library.

A judicial review hearing is strictly between you and the court of jurisdiction in the province where the conviction and sentence were handed down.

How do you get to the judicial review hearing?

When going to court for your judicial review hearing, you may be transported by the sheriff's staff working for the provincial government where your hearing is taking place. The rules about transportation, including rules about restraint equipment, vary from province to province. Even if you are being held in minimum security, you may have to wear restraint equipment when you are being transported.

What are CSC's responsibilities?

Under section 8 of the Corrections and Conditional Release Regulations, the CSC has to ensure that you appear in court for your judicial review proceedings if

- the court requires your presence at the hearing; or
- you ask to be at the hearing.

CSC also follows regional instructions set out in standard operating practices developed by CSC Regional Headquarters.

The CSC pays to transport you to the jurisdiction of your hearing and for the security this requires, but local authorities normally transport you to and from the court each day.

During the judicial review, the CSC and the institutional parole officer provide information, clarification or other resources that the court asks for.

A parole officer is also required to prepare a detailed **parole eligibility report**. In doing this report, the parole officer follows the judge's instructions and the rules set out by the province or territory for the judicial review hearing.

To write the report, the parole officer goes through your whole file and summarizes it. This report completely, impartially and objectively describes your character and conduct, including your social, family, criminal and institutional history.

Specifically, the parole eligibility report summarizes your social and criminal background; your classifications and evaluations; your performance and conduct; and your psychiatric and psychological assessments.

The officer has to write the report so that it is neither for you nor against you. The officer can't include only the good things, or only the bad things. It's like the old TV show *Dragnet*: "Just the facts."

In addition, CSC parole officers have to appear at a preliminary hearing, at the judicial review hearing or both, if subpoenaed by the court.

What happens during the judicial review hearing?

You have the paperwork done and you are in court. What happens now?

First, the jury is selected.

Then, your lawyer calls the parole officer who wrote the parole eligibility report. Your lawyer has to be sure that all the jury members have a copy of your exhibit brief which includes your parole eligibility report. That way, they can read along as the parole officer reads the report aloud.

Your lawyer should have the parole officer read and explain the whole report in front of the jury, so that the report is part of the official record. Make sure your lawyer does this. Otherwise, the judge and jury may have to read the report on their own, which means you can't be sure that they've read or understood the whole thing.

You may consider using the diagram, which we illustrate in Appendix B. If so, the parole officer is the best person to explain the diagram to the jury. Then, throughout the hearing, your lawyer can have each witness identify on the diagram the part of the system they worked for. This way, the jury can refer to the diagram whenever witnesses are talking about themselves or about other people in the system.

It is your decision as to whether or not you should testify on your own behalf. Remember that the onus is on you and your lawyer to show the jury that you have made real progress and that your ineligibility period should be reduced. It seems that it is important to juries to hear directly from the applicant in this process so you should be fully prepared to make a presentation to the jury.

Other people can support your application, so your lawyer may decide to call on your In-Reach Worker, teachers or community volunteers to testify.

The whole review will usually last about a week in front of a judge and a jury.

What information *must* the jury consider?

Juries must consider certain things when deciding on an application:

- your character and any indication of change;
- your conduct while serving your sentence and your involvement in programs;
- the offence for which you were convicted;
- any information provided by the victim or victims; and
- anything else the judge considers relevant.

What other information *may* the jury consider?

Other things can influence a jury:

- whether you have any previous criminal record;
- whether you followed your correctional plan from the very beginning of your sentence;
- whether you went into counselling and had psychological and psychiatric assessments;
- whether you always kept yourself employed;
- how you look (so wear appropriate clothes and be well-groomed); and
- whether family and/or community members are there to support you.

What are the possible results of a judicial review hearing?

There are two possible results of a judicial review hearing.

1. The jury may decide *not* to reduce the number of years of imprisonment without eligibility for parole. If it decides this, it may also decide whether you can apply again. If so, it may set a re-application date, which will be at least two years away.

2. The jury may decide to reduce the number of years of imprisonment without eligibility for parole.

Everyone on the jury has to agree to do this. In this case, two-thirds ($2/3$) of the jury must then agree on: (a) how many years to take off your parole ineligibility period, or (b) whether to end your ineligibility for parole, making you eligible to apply for parole immediately.

How to Prepare for Your Judicial Review and Your Life

Who can help you prepare for your judicial review?

First and most importantly, yourself. You must organize everything long before you apply for a judicial review. If you think that all you have to do is sit and wait for the date to roll around, then you will end up with a “no” from the jury. Remember, you have to convince 12 jury members that you deserve a “yes.”

At your hearing, you will have to explain what you have learned and how you have changed, so your program has to start from your first day in the penitentiary. Upgrade your education. Make sure you are fulfilling your correctional plan. Complete programs for drugs or alcohol. By addressing these things during your time in the penitentiary, you can show a jury that your situation has changed.

You should keep a diary of everything you accomplish during the 15 years before a judicial review. List any programs you finished. Track your transfers to lower security institutions. Write down anything else that might help.

Your diary should also have the names and addresses of people who might testify on your behalf. Remember that it's up to you to build supportive and constructive relationships with people while you are incarcerated. So get to know the facilitator and any other person instructing you. During the 15 years until your review, you will have the opportunity to meet lots of people who may be willing to lend support and even appear in court on your behalf. It will be important to have the information you need to contact them to ask for their support before your judicial review.

Who else can help?

- **Your LifeLine In-Reach Worker.** In-Reach Workers are trained in most aspects related to the Correctional Service of Canada. They are either lifers or long-term offenders who have been successfully established in the community for at least five years. They can support you while you're serving your life sentence.

Make sure you regularly meet with your In-Reach Worker, who will play a big role in both your judicial review hearing and your National Parole Board hearings.

During the years before your judicial review, you will have many case management officers, but your LifeLine In-Reach Worker won't come and go as often as CSC staff might.

- **Your family and your support group.**
- **CSC Staff.** Get to know the staff at the institution where you have been serving your sentence.
- **Your lawyer.** This person is best able to help you if you are able to provide pertinent, positive information about the last 15 years of your life.

Don't forget to sign a release of information so that your lawyer can get access to all your files.

What should you keep in mind when choosing a lawyer?

Be careful when choosing your lawyer. Get an experienced lawyer who knows the ins and outs of the court's procedures, somebody who will ensure that your rights are handled effectively throughout this process.

When picking a lawyer, look for somebody who projects confidence and who will be in control throughout the entire case. Your lawyer should speak loudly and clearly, should be direct when asking the witness a difficult question, and should be firm when trying to get an answer from a difficult witness. Your lawyer should be able to go straight to the issue so that the jury remembers what the question was.

Remember, judicial review proceedings are different from criminal court proceedings. In criminal court, the Crown lays out the case and your lawyer gets to cross-examine the witnesses afterwards. But in a judicial review hearing, your lawyer lays out the case and the Crown then cross-examines the witnesses. The Crown may even have the final say during a judicial review hearing, and the last words a jury hears may be the ones it remembers most. Talk to your lawyer to make sure he or she can adjust to these differences.

Make sure your lawyer can explain to the jury the differences between an institutional parole officer, a correctional officer and a community parole officer. Your lawyer should also understand the difference between the Correctional Service of Canada and the National Parole Board, as well as their different authorities and responsibilities.

In fact, your lawyer should have a good overall understanding of the CSC. For example, your lawyer should know the differences between escorted and unescorted temporary absences, work release, and day and full parole, as well as the eligibility dates for all of these.

What will you need at the judicial review hearing?

The exhibit brief has all the information that will be presented to the jury, including your parole eligibility report. It also includes the following.

1. **Psychological assessments:** You should ensure that you have up-to-date psychological and risk assessments included in your report. The parole officer will most likely consult with the institutional psychologist after the completion of a “correctional plan progress report,” which records your progress on your correctional plan. There will be a psychological or psychiatric report, or both, on you from the year before you were eligible for judicial review. Through your case management officer, you may want to suggest that you be assessed every four years, starting at the beginning of your sentence, as part of your correctional plan.
2. **Diplomas or certificates:** Give your lawyer a record of all your educational achievements since you were incarcerated. Give him or her all the letters of support you can get, or already have, from people who helped you in your personal development. Think about the programs you have taken on life skills, anger management, drugs and alcohol, restorative efforts, community service and so on.

Next, make sure your lawyer has many copies of the exhibit brief for the day of the hearing.

There should be one copy each for you, the judge, the Crown and each jury member. This way, everyone will be able to refer to the exhibit brief during the hearing. It is a good idea to have five or six more on hand, in case one of your witnesses has to go over something in it before taking the stand.

You may want your exhibit brief to include a description of the people who work with you throughout your sentence as explained in Appendix B. This diagram helps jury members understand how all the witnesses fit into your life over the past 15 years. It also explains how the correctional system works.

What else should you do to prepare for your judicial review hearing?

Before going to court, you and your lawyer must review all the details of your case and your life, as well as your parole plan for, at the very least, the next 10 years. Be sure to keep notes on every meeting with your lawyer, and remember that your lawyer will only be as good as the information you have given her or him.

Your lawyer has to make it clear to the jury and the court that changing your eligibility date does not mean that you will be released immediately.

Instead, it means that the National Parole Board will take a look at your case and consider a gradual release process. Make the jury and court aware that it could take anywhere from two to three years before you are paroled to a halfway house.

Make sure that your lawyer has related, relevant information. For example, how many people convicted of crimes like yours are now on parole and functioning successfully? Get the names of people convicted of similar crimes, even if their sentences were different, and find out how long they have been out. Ask your LifeLine In-Reach Worker to help your lawyer get this kind of information, which can help jurors justify, in their own minds, a favourable review.

There are some things you should find out when you first talk to your lawyer. Is the lawyer working with an assistant? Is the assistant also going to be in court for the whole review? If not, have a family member or your LifeLine In-Reach Worker sit with your lawyer. In one case, the Crown lawyer had a police officer sitting with him through the whole thing, but the inmate's lawyer was by herself. It looked as if she were all alone and working on a shoestring.

Judicial review law is consistent across Canada. However, there are a few procedural differences from province to province. Make sure your lawyer is aware of these differences before your review. If your lawyer is from the province where you are incarcerated, make sure she or he is familiar with any differences in the laws of the province where your review will be held. Also make sure he is eligible to practise law in that province.

Conclusion

If you do not get your parole ineligibility period reduced, you still have some options.

- If the judge or jury decides that you may re-apply in two years or more, take that time to really work on your circumstances. Then, at your next judicial review, you can show you are committed to becoming a responsible, law-abiding citizen.
- If you do not agree with the decision of the Superior Court judge who **pre-screened** your application, you may appeal to the Court of Appeal in that province. However, the Attorney General may also appeal the decision.
- If you do not agree with the jury's decision, you may apply directly to the Supreme Court of Canada to ask them to hear your appeal.

There is a life awaiting you after life imprisonment. For those lifers beginning their life sentence, everything seems to be lost forever. There is a sense of drowning in an ocean of time.

What you need to know is that there is a LifeLine. Paroled lifers sponsored by community agencies reach into prison, offering inmate-lifers a sense of purpose, direction and hope.

Give a life back—your own.
Reach for that LifeLine.

Skip Graham
Executive Director,
St. Leonard's House, Windsor

Information on LifeLine

LifeLine is an innovative service provided through a partnership between Correctional Service Canada (CSC), National Parole Board (NPB) and non-government organizations. It's about long-term offenders — lifers — who have successfully re-integrated into the community for at least five years and who are recruited to help other lifers throughout their sentences. Its mission is "to provide, through both the In-Reach component and community endeavours, an opportunity to motivate inmates and to marshal resources to achieve successful, supervised, gradual integration into the community."

How to Reach LifeLine

LifeLine

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Karl Thomassin, for his publication *La couverture journalistique des requêtes de révision judiciaire au Canada*, 1999, Université de Montréal.

Martin's Annual Criminal Code, 2001.

Appendix A

Outcomes of All Judicial Reviews – Reductions in Parole Eligibility Date

(as of January 13, 2002)

Outcome	Alberta	British Columbia	Manitoba	New Brunswick
20 reduced to 15	0	0	0	0
20 reduced to 16	0	1	1	0
20 reduced to 17	0	0	1	0
20 reduced to 18	0	0	0	0
25 reduced to 15	1	0	1	0
25 reduced to 16	1	1	0	0
25 reduced to 17	1	0	0	0
25 reduced to 18	0	0	1	0
25 reduced to 19	0	3	0	0
25 reduced to 20	4	2	0	1
25 reduced to 21	0	0	0	0
25 reduced to 22	0	0	0	0
25 reduced to 23	0	0	0	0
25 reduced to 24	1	0	0	0
Denied	4	3	1	0
Total	12	10	5	1

Nova Scotia	Ontario	Quebec	Saskatchewan	Total
0	0	6	0	6
0	0	2	0	4
0	0	1	0	2
1	0	0	0	1
0	2	16	1	21
0	1	7	1	11
0	1	5	0	7
0	3	2	0	6
0	4	7	0	14
0	1	6	0	14
0	2	1	1	4
0	0	1	0	1
0	0	0	1	1
0	1	0	0	2
0	9	4	3	24
1	24	58	7	118

Appendix B

People Working with You Throughout Your Sentence



